

BEFORE THE
POSTAL REGULATORY COMMISSION
WASHINGTON, D.C. 20268-0001

MAIL CLASSIFICATION SCHEDULE CHANGE
(LIGHTWEIGHT COMMERCIAL PARCELS)

Docket No. MC2011-28

RESPONSE OF THE UNITED STATES POSTAL SERVICE TO
NOTICE AND ORDER CONCERNING CLASSIFICATION CHANGES
(August 19, 2011)

The Postal Regulatory Commission's Notice and Order Concerning Classification Changes, issued on August 16, 2011, contained five questions to the Postal Service regarding the proposed Mail Classification Schedule changes for Lightweight Commercial Parcels. The Postal Service hereby provides its responses to the five questions. Answers were sought no later than today. Each question is stated verbatim and is followed by the response.

Respectfully submitted,

UNITED STATES POSTAL SERVICE

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August 19, 2011

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Question 1

Under Commission regulation 39 CFR 3020.91, the Postal Service must submit “corrections to product descriptions in the Mail Classification Schedule...no later than 15 days prior to the effective date of the proposed change.” Please provide the effective dates of the proposed changes outlined in the Notice.

RESPONSE:

In accordance with the 15-day notice period, the Postal Service intends for the proposed Mail Classification Schedule (MCS) changes outlined in the Notice to become effective on August 29, 2011.

As a practical matter, given the Postal Service’s need to make internal systems changes and publish changes to the Domestic Mail Manual (DMM) to reflect the transfer of the Commercial Base and Commercial Plus portions of First-Class Mail Parcels to the competitive product list, and mailers’ need for time to adjust to the DMM changes, the Postal Service intends to begin accounting for the transferred product as a competitive product at the beginning of Fiscal Year 2012. Therefore, the Postal Service will not use the new “Commercial First-Class Package Service” name (and, for that matter, would not have used the old “Lightweight Commercial Parcels” name) in the marketplace until the beginning of Fiscal Year 2012.

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Question 2

The Notice states that the Postal Service is seeking to change the name of the “Lightweight Commercial Parcels” competitive product to “Commercial First-Class Package Service” for “business reasons related to the marketing of the Postal Service’s competitive products....” *Id.* at 1. Please describe those business reasons and their relationship, if any, to First-Class Mail or other market dominant products.

RESPONSE:

In its request to transfer the Commercial Base and Commercial Plus portions of First-Class Mail Parcels to the competitive product list, the Postal Service noted that “Lightweight Parcel Select” was a provisional name for the product and that the Postal Service contemplated that the final name for the product could be different.¹ Upon further reflection, the Postal Service believes that giving the transferred product the entirely new name of “Lightweight Commercial Parcels” could give existing customers the false impression that the service treatment accorded to the product may have changed upon transfer. The “Commercial First-Class Package Service” name will better convey that the transferred product retains the same service treatment it had and continues to use the same transportation network it used prior to the transfer.

Further, the Postal Service believes that customers could easily confuse “Lightweight Commercial Parcels” with “Lightweight Parcel Select” (the new name of commercial Standard Mail Parcels upon transfer to the competitive product list). Such confusion could cause Lightweight Commercial Parcels to lose business, if customers believe that the product will receive service treatment similar to that of Lightweight

¹ Request of the United States Postal Service Under Section 3642, Docket No. MC2011-22 (Feb. 24, 2011), at 1 and note 2. As stated in note 2 of the Request, the Postal Service had planned to supplement its Request once the product’s name was finalized. However, the Request was approved before the Postal Service was able to finalize the name.

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Parcel Select.

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Question 3

If the proposed name change is approved, the competitive product “Lightweight Commercial Parcels” would be using terminology traditionally reserved for market dominant products (e.g., First-Class).

- a. Please explain whether the use of market dominant terminology for competitive products is appropriate under 39 U.S.C. 3642 and market dominant/competitive product regime set up by the Postal Accountability and Enhancement Act (PAEA).
- b. Please explain how the Postal Service intends to ensure that there is no confusion among consumers about whether “Commercial First-Class Package Service” is accorded the same treatment as the market dominant products within the First-Class Mail class.
- c. Please explain whether there are any concerns that customers might be confused that “Commercial First-Class Package Service” will contain some of the defining characteristics of First-Class Mail, including, for example, being sealed against inspection. Please explain what action the Postal Service is planning on taking to eliminate such potential confusion.
- d. Please explain whether it is appropriate under the PAEA for competitive products to use resources of market dominant products (including trademarks and copyrights) for the benefit of competitive products. If so, how are such resource uses to be accounted for?

RESPONSE:

- (a) Section 3642 does not require that a product be renamed upon transfer from the market dominant product list to the competitive product list. Indeed, by explicitly allowing the transfer of only a portion of a class or subclass, section 3642 makes it likely that product transfers would result in similar names being used across the market dominant and competitive lists. And that is already, in fact, the case with Post Office Box Service. The market dominant and competitive Post Office Box Service products have the same name in the MCS

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and use the same marketing name in the marketplace.

- (b) Commercial First-Class Package Service is available only to commercial mailers. It is not available to consumers. The availability of Commercial First-Class Package Service to commercial mailers should not cause confusion to consumers, who access the Postal Service through retail channels and are presented with only those products that retail customers are eligible to use.
- (c) The Commercial Plus portion of Commercial First-Class Package Service is essentially the same as First-Class Mail. There are two differences between the Commercial Base portion of Commercial First-Class Package Service and First-Class Mail: (i) Commercial Base is not sealed against inspection; and (ii) Commercial Base mail pieces cannot contain letters, unless the letters meet certain exceptions.

To prevent confusion among customers regarding the differences between Commercial Base and First-Class Mail, the Postal Service will use multiple communication channels to explain the differences to customers. These channels will include a Federal Register notice describing revisions to the Domestic Mail Manual,² a dedicated page on USPS.com, other Postal Service publications and notices (e.g., the Postal Bulletin), and communication through Postal Service partners (e.g., PC Postage vendors). The communication will clearly identify eligibility standards, acceptable contents and restrictions (including an explanation of what is and is not sealed against inspection), preparation and induction requirements, payment methods, and service

² The Postal Service published this Federal Register notice on August 18, 2011.

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standards.

- (d) Competitive products necessarily benefit from market dominant products in that the existence of market dominant products creates greater economies of scope than there would otherwise be. The Postal Service does not believe that it is inconsistent with the policies of the PAEA for products transferred to the competitive product list to benefit from the trademarks or marketing names of market dominant products. The Commission has already allowed such benefits to accrue in the case of Post Office Box Service. The PAEA accounts for benefits that competitive products derive from market dominant products by requiring that competitive products collectively cover an appropriate share of Postal Service institutional costs.

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Question 4

The Postal Service's proposal seeks to eliminate the letter prohibition from Commercial Plus "Lightweight Commercial Parcels." Please discuss how this change conforms with 39 U.S.C. 3642 and the Commission's implementing regulations, including 39 U.S.C. 3642(b)(1) and (3).

RESPONSE:

Section 3642 precludes "products covered by the postal monopoly" from being transferred from the market dominant product list to the competitive product list. The provision defines "products covered by the postal monopoly" as meaning "any product the conveyance or transmission of which is reserved to the United States under section 1696 of title 18, subject to the same exception as set forth in the last sentence of section 409(e)(1)." In other words, section 3642 precludes the transfer of products that fall within the Postal Service's letter monopoly to the competitive product list.

Through its reference to section 409(e)(1) in its definition of "products covered by the postal monopoly," section 3642 incorporates the exceptions to the letter monopoly contained in section 601 and in Postal Service regulations promulgated pursuant to section 601. Thus, if a letter product fits within one of the section 601 exceptions, it may be transferred to the competitive product list.

Because mailers are permitted to include letters in First-Class Mail Parcels mail pieces, First-Class Mail Parcels is covered by the postal monopoly. For this reason, when the Postal Service requested the transfer of the Commercial Base and Commercial Plus portions of First-Class Mail Parcels to the competitive product list, it inserted MCS language prohibiting the product from being used to mail letters, thereby removing the product from the postal monopoly so that its transfer would not be

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precluded by section 3642(b)(2).³ The Postal Service did not clarify that the new letter prohibition applied only to the Commercial Base portion of the product, which is covered by the postal monopoly, and not to the Commercial Plus portion of the product, which is excepted from the postal monopoly pursuant to section 601(b)(1). The MCS changes contained in the Notice of Minor Classification Change filed in the instant docket clarify that the letter prohibition applies only to Commercial Base and not to Commercial Plus.

To be clear, the Postal Service does not believe that, under section 3642 and under title 39 generally, it can transfer products subject to the postal monopoly to the competitive product list by adding letter prohibitions and then, once such products are on the competitive product list, decide to simply remove the letter prohibitions. As explained above, that is not what the Postal Service is doing by clarifying that the letter prohibition does not apply to Commercial Plus.

³ Request of the United States Postal Service Under Section 3642, Docket No. MC2011-22 (Feb. 24, 2011), Attachment B at 7, and Attachment C at 5.

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Question 5

Please refer to the attachment to the Notice, Mail Classification Changes, Part B.2125.1.c., which is proposed to read as follows: “Commercial First-Class Package Service Commercial Base mail is not sealed against postal inspection. Mailing of matter as such constitutes consent by the mailer to postal inspection of the contents, regardless of the physical closure.” This statement does not discuss the Commercial Plus portion of the proposed “Commercial First Class-Package Service.” Please discuss whether Commercial Plus is sealed against inspection and, if necessary, provide additional proposed clarifying Mail Classification Schedule language for the “Commercial First-Class Package Service.”

RESPONSE:

The Commercial Plus portion of Commercial First-Class Package Service is sealed against inspection. Attachment A to this response contains revised MCS language that explicitly states that Commercial Plus is sealed against inspection.

MAIL CLASSIFICATION CHANGES

(Additions are underlined and deletions are marked with strike-through)

PART B COMPETITIVE PRODUCTS

2100 DOMESTIC PRODUCTS

2125 ~~Lightweight Commercial Parcels~~ First-Class Package Service

2125.1 Description

- a. Any mailable matter may be mailed as ~~Lightweight Commercial Parcels~~ First-Class Package Service Commercial Base mail, except matter that meets the definition of "letter" in 39 C.F.R. § 310.1 and does not fit within any of the exceptions or suspensions to the Private Express Statutes in 39 C.F.R. Parts 310 and 320.
- b. Any mailable matter may be mailed as Commercial First-Class Package Service Commercial Plus mail.
- ~~b c.~~ Lightweight Commercial Parcels First-Class Package Service Commercial Base mail is not sealed against postal inspection. Mailing of matter as such constitutes consent by the mailer to postal inspection of the contents, regardless of the physical closure. Commercial First-Class Package Service Commercial Plus mail is sealed against postal inspection.
- ~~e d.~~ Lightweight Commercial Parcels First-Class Package Service pieces that are undeliverable-as-addressed are entitled to be forwarded or returned to the sender without additional charge.
- ~~d e.~~ An annual mailing fee is required to be paid at each office of mailing by any person who mails at presorted prices (1505.2). Payment of the fee allows the mailer to mail at the Lightweight Commercial Parcels First-Class Package Service price.
- ~~e f.~~ Attachments and Enclosures. First-Class Mail or Standard Mail pieces may be attached to or enclosed in ~~Lightweight Commercial Parcels~~ First-Class Package Service mail. Additional postage may be required.

2125.2 Size and Weight Limitations

Commercial Base (Single-Piece, ADC, 3-Digit, and 5-Digit)

	Length	Height	Thickness	Weight
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Minimum	3.5 inches	3.0 inches	0.05 inch	None
Maximum	18 inches	15 inches	22 inch	13 ounces

Commercial Plus (Single-Piece, ADC, 3-Digit, and 5-Digit)

	Length	Height	Thickness	Weight
Minimum	6 inches	3.0 inches	0.25 inch	3.5 ounces
Maximum	18 inches	15 inches	22 inch	<16 ounces

2125.3 Minimum Volume Requirements

<u>Lightweight Commercial Parcels First-Class Package Service</u>	Minimum Volume Requirements
Commercial Base	
Single-Piece	None
ADC	500 pieces per mailing
3-Digit	500 pieces per mailing
5-Digit	500 pieces per mailing
Commercial Plus	5000 pieces per year commitment
Single-Piece	200 pieces or 50 pounds per mailing
ADC	500 pieces per mailing
3-Digit	500 pieces per mailing
5-Digit	500 pieces per mailing

2125.4 Price Categories

The following price categories are available for the product specified in this section:

- Commercial Plus
 - 5-Digit
 - 3-Digit
 - ADC
 - Single-Piece
- Commercial Base
 - 5-Digit
 - 3-Digit
 - ADC

- Single-Piece

2125.5 Optional Features

The following additional postal services may be available in conjunction with the product specified in this section:

- Ancillary Services (1505)
 - Address Correction Service (1505.1)
 - Business Reply Mail (1505.3)
 - Certified Mail (1505.5)
 - Certificate of Mailing (1505.6)
 - Collect on Delivery (1505.7)
 - Delivery Confirmation (1505.8)
 - Insurance (1505.9)
 - Merchandise Return Service (1505.10)
 - Registered Mail (1505.12)
 - Return Receipt (1505.13)
 - Restricted Delivery (1505.15)
 - Signature Confirmation (1505.17)
 - Special Handling (1505.18)

2125.6 Prices

Commercial Plus

Weight (ounces)	5-Digit (\$)	3-Digit* (\$)	ADC* (\$)	Single-Piece (\$)
≥3.5 and <16	3.210	3.410	3.610	3.890

* For parcels claiming 3-Digit or ADC prices, a \$0.05 surcharge applies if the parcels are not barcoded.

Commercial Base

Maximum Weight (ounces)	5-Digit (\$)	3-Digit* (\$)	ADC* (\$)	Single-Piece (\$)
1	1.122	1.254	1.340	1.56
2	1.122	1.254	1.340	1.56
3	1.122	1.254	1.340	1.56
4	1.292	1.424	1.510	1.73
5	1.462	1.594	1.680	1.90
6	1.632	1.764	1.850	2.07
7	1.802	1.934	2.020	2.24

8	1.972	2.104	2.190	2.41
9	2.142	2.274	2.360	2.58
10	2.312	2.444	2.530	2.75
11	2.482	2.614	2.700	2.92
12	2.652	2.784	2.870	3.09
13	2.822	2.954	3.040	3.26

* For parcels claiming 3-Digit or ADC prices, a \$0.05 surcharge applies if the parcels are not barcoded or are nonmachinable.